IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Petition No. 1327 of 2002 (M/S)

1. Madan Mohan Kaushik,
   S/o late Shri Kuber Dutt Kaushik
2. Dhananjay Kaushik,
   S/o late Shri Kuber Dutt Kaushik
3. Rudra Kumar,
   S/o late Pt. Kuber Dutt Kaushik

All R/o Kuber Bhawan,
Opposite Town Hall,
Muzaffarnagar. ..... Petitioners

Versus

1. Om Prakash Ahuja,
   S/o Sri Tejbhan Ahuja
2. Sunil Kumar Ahuja,
3. Vimlesh Ahuja,
4. Pravesh Ahuja,
   All S/o Om Prakash Ahuja,
   and R/o 148 New Haridwar Colony,
   Haridwar, District Haridwar.
5. Anil Kumar Jain,
   S/o Shri Sheel chand Jain (C.A.)
   Devpura Chowk, Haridwar.
   Tehsil and District Haridwar
6. Smt. Baladevi
   W/o Vinod Kumar
   Khadi Gramoudhyog Asharam,
   Ranipur Road, Opp. Vishal Traders, Haridwar
   Tehsil and District Haridwar
7. Umasuthosh Kumar Kaushik
8. Anil Kumar Kant Kaushik,
9. Ashwani Kumar Kaushik,
   All S/o of Shri Anand Swaroop Kaushik,
   and R/o Shiv Chandra Nagar,
   Ranipur Turn, Haridwar,
10. Shri Ramakant Sharma,
    S/o Shri Balkrishna Sharma,
    R/o Shanti Bila, Sharvan Nath Nagar,
    Haridwar, Tehsil & Distt. Haridwar

..... Respondents

Mr. Madan Mohan Kaushik, petitioner in person.
Mr. Alok Singh, learned Senior Advocate assisted by
Mr. M. Bhardwaj, learned counsel for the respondents.

Hon'ble Prafulla C. Pant, J.

By means of this petition, moved under Article 227 of the Constitution of India, the petitioners have sought writ in the

nature of certorari quashing the order dated 28.03.2001 passed by learned Civil Judge (J.D.), Haridwar in misc. case No. 130 of 1998 and order dated 13.12.2002 passed by learned Additional District Judge/ 1st Fast Track Court, Haridwar in misc. appeal No. 34 of 2001.

(2) Brief factual matrix of the case is that original suit No. 247 of 1998 was filed on 21.09.1998 by the petitioners in which a temporary injunction was issued on 01.12.1998 directing the defendants not to raise construction over land in suit. It appears that on 10.12.1998, the defendants preferred misc. appeal No. 141 of 1998 against said order before the District Judge, Haridwar, in which operation of order dated 01.12.1998 was stayed. However, the said appeal appears to have been dismissed on 04.03.1999. Thereafter, a misc. case No. 130 of 1998 was filed by the plaintiffs / petitioners under Order 39 Rule 2A of the Code of Civil Procedure, 1908 (for brevity hereinafter 'the Code'), complaining the disobedience of the temporary injunction. It appears that after being hearing the parties, learned trial court rejected the same on 28th of March, 2001. Meanwhile, on 24th of December, 1999, the plaint had already been rejected by the trial court for non compliance of directions as to valuation and court fee. Aggrieved by the order dated 28.03.2001 passed on application under Order 39 Rule 2A of the Code, plaintiffs / petitioners preferred a misc. civil appeal No. 34 of 2001 before the learned Addl. District Judge, Haridwar. However, after hearing the parties the same was also dismissed on 13.12.2002. Hence, this petition.

3) I heard Mr. Madan Mohan Kaushik, petitioner in person, (power of attorney holder for the petitioner Nos. 2 & 3) and also Mr. Alok Singh, learned senior counsel appearing on behalf of defendants/ respondents and perused the relevant papers on record.

4) It is admitted that temporary injunction was issued on 01.12.1998 in original suit No. 247 of 1998 in favour of the plaintiffs/ petitioners. The dispute relates to the disobedience of the said temporary injunction. Mr. Madan Mohan Kaushik, petitioner in person, submitted that this case is a glaring example of gross violation of law as a three star hotel has been built over the land in suit ignoring the temporary injunction. This Court has to see the disobedience within the parameters of Rule 2A of Order 39 of the Code. Perusal of the impugned order shows that the learned courts below were of the view that on the basis of the evidence of record it was difficult to say if the disputed construction was raised during the period when the temporary injunction was in operation. Learned counsel for the respondents submitted that finding of the trial court as well as of lower appellate court cannot be interfered into by this Court under constitutional jurisdiction conferred under Article 227 of the Constitution of India. But this Court can very well see if the findings were arrived wrongly without following the procedure prescribed by law.

5) Admittedly, the temporary injunction was not in operation between 10th December, 1998 to 4th March, 1999 when the operation of the temporary injunction dated 01.12.1998 remained stayed by the appellate court. The plaintiffs / petitioners have not denied if the construction were not on during that period. Not only this, it is also not denied if the plaint was not rejected on 24th December, 1999. As such, the temporary injunction stood automatically vacated on said date as the suit itself was not surviving. As to the dates when the constructions were raised, it is a matter of finding of fact regarding which this Court is not inclined to interfere, particularly, when the finding of fact given by the courts below is concurrent in this matter. Mr. Kaushik, petitioner in person, submitted that this Court can set aside the impugned orders on reaching the conclusion that the finding of fact are perverse or in gross violation of law. However, there must be ground to conclude the findings of trial court as well as that of the

appellate court to declare the same as perverse or in gross violation of law. The proceedings under Order 39 Rule 2A of the Code are summary in nature and learned trial court as well as lower appellate court has passed the orders after hearing the parties and after going through the evidence on record. It is not the case of the petitioners that they were not heard by trial court or by the lower appellate court.

6) Mr. Alok Singh, learned counsel appearing on behalf of the respondents drew my attention to the principle of law laid down in Sheo Kumar Saxena V. Zila Sahkari Vikas Sangh, Gonda and others reported in A.I.R. 1983 ALL 180 and submitted that as on 28th March, 2001 when the misc. case No. 130 of 1998, moved under Order 39 Rule 2A of the Code was dismissed, the plaint of the original suit had already been rejected, as such the temporary injunction was not in operation. Therefore, no order either for attachment or for arrest could have been issued under Order 39 Rule 2A of the Code, as the respondents were no more required to comply with the interim order which was not existent on that date. This Court is in agreement with the submissions of the learned senior counsel and the view taken by the Allahabad High Court in the aforementioned case. Mr. Madan Mohan Kaushik, the petitioner / plaintiff, submitted that the interim order got restored on restoration of the suit and as such the proceedings under Order 39 Rule 2A of the Code cannot be said to be infructuous. This Court has considered the matter from the angle the petitioners have raised. But on revival of temporary injunction from the date the suit get restored if the defendants committed any disobedience, the same can be complained by plaintiffs again under Order 39 Rule 2A of the Code but as to the period during which the temporary injunction order was not in operation, if any construction is raised no order as to attachment or arrest can be issued under Rule 2A Order 39 of the Code against the defendants.

7) In the circumstances and in view of the above discussion, the petition is liable to be dismissed. Therefore, without expressing any opinion as to the final merits of the suit or in other cases pending before the trial court, this petition is dismissed. No order as to costs.

(**Prafulla C. Pant, J.)**

Dt. 18.12.2004

HN